

STATE OF WISCONSIN
Department of Industry, Labor and Human Relations

In the Matter of the Petroleum
Environmental Cleanup Fund Act (PECFA)
Application of:

Lynn Marsh-Elbert
1503 South Main Street
Rice Lake, Wisconsin

Petitioner.

This is an appeal of a decision of the DILHR Division of Safety and Buildings which denied a claim for reimbursement under §101.143, Stats., the Petroleum Environmental Cleanup Fund Act (PECFA).

The petitioner submitted a claim for the reimbursement of \$24,771.12 under §101.143, Wis. Stats., which was denied by the Division of Safety and Buildings. The petitioner requested a hearing to review the denial. The hearing, conducted under §101.02(6)(e) to (i), Wis. Stats., was held by telephone conference call on August 27 and September 3, 1992, before Howard I. Bernstein, DILHR General Counsel. The petitioner appeared by Attorney Mark R. Kaster, Dorsey & Whitney, 2200 First Bank Place East, Minneapolis, Minnesota 55402-1498; the Division of Safety and Buildings appeared by Mr. Miles M. Mickelson, Environmental Cleanup Fund Coordinator, P.O. Box 7969, Madison, Wisconsin 53707.

The claim was initially denied because the expenses were not due to a petroleum product discharge from a petroleum product storage system. I agree with this conclusion and affirm the original decision.

FINDINGS OF FACT

1. In September 1985, Ms. Marsh-Elbert purchased property located at 1503 South Main St. in Rice Lake, Wisconsin. The property was previously operated as Skrupky's Auto Row and included a gasoline service station with four underground storage tanks along the west side of the building.

2. In August 1989, Ms. Marsh-Elbert noticed distressed vegetation and petroleum odors coming from the east side of the building. She reported the problem to the Department of Natural Resources, and, as directed by the DNR, took further steps to investigate the cause of the apparent contamination. Subsequent investigation revealed that no petroleum leakage had taken place into the soils on the west side of the building. A degree of petroleum contamination was present along the east side of the building, in the same general area where pipes coming from the underground tanks (and apparently used for venting or fill purposes) were present.

3. Ms. Marsh-Elbert paid for the removal of the four tanks on the west side of the building and the contaminated soil on the east side of the building- Although it had initially issued a letter stating that the site was eligible for PECFA reimbursement, the Division of Safety and Buildings denied Ms. Marsh-Elbert's claim, on the grounds that the removal of the tanks was not necessary as a contamination remediation measure.

4. The petitioner's consultant states that the petroleum-affected soil on the east side of the building was the result of the "release" of contamination through the piping system. In other words, petroleum somehow came out of the pipes that were connected to the tanks.

5. Because the only evidence as to the nature of the contamination is the existence of the petroleum in the soil near the piping system, there is nothing that makes a discharge from the system any more likely a cause of the contamination than the possibility that petroleum was spilled by the suppliers of petroleum products to the service station when it was in operation.

CONCLUSIONS OF LAW

1. The existence of a reimbursable petroleum products discharge under §101.143(4)(a), Stats., has not been established.

2. The involvement of DNR under §144.76, Stats., the "spill law," does not mandate that all costs associated with underground tanks be reimbursed by PECFA funds.

3. The issuance of a written PECFA eligibility determination does not mandate that all costs at a site be reimbursed by PECFA funds.

4. The costs incurred by Ms. Marsh-Elbert at this site are not reimbursable under PECFA.

OPINION

There is no question that Ms. Marsh-Elbert acted responsibly in reporting petroleum contamination on her property and cooperating with the DNR investigation orders.

However, the fund created to provide compensation under sec. 101.143, Stats., does not provide funds to every person who has some petroleum contamination on his or her property. The statute sets specific eligibility requirements, and this department is empowered to provide reimbursement only to those who meet the requirements.

Most specifically, the reimbursement award under §101.143(4)(a), Stat's., must be for a discharge from a petroleum products storage system. There is no evidence that the petroleum in the soil along the east side of the building came from the system rather than from delivery vehicles used to fill the tanks.

ORDER

For these reasons, the decision of the Division of Safety and Buildings is affirmed.

Dated this 2nd day of November, 1992.

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